

Amendment No. 1 to SB0452

Bell
Signature of Sponsor

AMEND Senate Bill No. 452*

House Bill No. 513

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 17-5-201, is amended by deleting the section and substituting instead the following:

(a) As of the effective date of this act, the existing membership of the board of judicial conduct is vacated and reconstituted to consist of sixteen (16) members, selected as follows:

(1) One (1) current or former trial judge, to be appointed by the Tennessee trial judges association;

(2) Two (2) current or former general sessions court judges, to be appointed by the Tennessee general sessions judges conference;

(3) One (1) current or former municipal court judge, to be appointed by the Tennessee municipal judges conference;

(4) One (1) current or former juvenile court judge, to be appointed by the Tennessee council of juvenile and family court judges;

(5) One (1) current or former court of appeals or court of criminal appeals judge, to be appointed by the Tennessee judicial conference;

(6) Four (4) members, including three (3) who are neither a judge nor an attorney and one (1) who is a current or former judge, to be appointed by the speaker of the senate;

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(7) Four (4) members, including three (3) who are neither a judge nor an attorney and one (1) who is a current or former judge, to be appointed by the speaker of the house of representatives; and

(8) Two (2) members who are attorneys licensed to practice law in this state, to be appointed by the governor.

(b) The board shall select:

(1) Its own chair from among the current or former judges serving on the board;

(2) A vice chair from among its non-judicial members; and

(3) One (1) member to serve as a direct liaison to the members of the general assembly.

(c)

(1) All appointments to the board must be made by July 1, 2019.

(2) In order to stagger the terms of the newly appointed board members, initial appointments must be made as follows:

(A) The members appointed under subdivisions (a)(1)-(3) serve initial terms of one (1) year, which expire on June 30, 2020;

(B) The member appointed under subdivision (a)(4), the members appointed under subdivision (a)(6), and one (1) of the members appointed under subdivision (a)(8) serve initial terms of two (2) years, which expire on June 30, 2021; and

(C) The member appointed under subdivision (a)(5), the members appointed under subdivision (a)(7), and one (1) of the members appointed under subdivision (a)(8) serve initial terms of three (3) years, which expire on June 30, 2022.

(3) Following the expiration of members' initial terms as prescribed in subdivision (c)(2), all terms are for three (3) years, to begin on July 1 and terminate on June 30, three (3) years thereafter.

(d) Each member of the board is eligible for reappointment to one (1) additional term. Vacancies on the court for an unexpired term must be filled for the remainder of the term in the same manner that original appointments are made but are for the duration of the unexpired term only.

(e)

(1)

(A) The chair shall divide the board into:

(i) Five (5) investigative panels of three (3) members each, with each investigative panel to be composed of at least one (1) member who is a current or former judge; and

(ii) Three (3) hearing panels of five (5) members each, with two (2) hearing panels to each be composed of three (3) non-judicial members and two (2) members who are current or former judges, and one (1) hearing panel to be composed of two (2) non-judicial members and three (3) members who are current or former judges.

(B) The chair shall not serve as a permanent member of an investigative panel or a hearing panel but may serve as a member of a panel on a temporary basis to fill a vacancy.

(C) Membership on the panels may rotate in a manner determined by the chair; however, a member shall not sit on both the hearing and investigative panels for the same proceeding.

(2) A hearing panel has the duty and authority to rule on prehearing motions, conduct hearings on formal charges, and make findings, conclusions, and impose sanctions or dismiss the case.

(3)

(A) An investigative panel has the duty and authority to:

(i) Review the recommendations of disciplinary counsel after preliminary investigation and either authorize a full investigation or dismiss the complaint; and

(ii) Review the recommendations of disciplinary counsel after a full investigation and approve, disapprove, or modify the recommendations as provided in § 17-5-304.

(B) The investigative panel shall require a full investigation when a motion to dismiss a complaint fails to receive a unanimous vote from the panel and where a motion to authorize a full investigation passes by a majority vote of the panel.

(4) An attorney member of the board shall not sit on an investigative or hearing panel if the attorney has ever appeared before the judge against whom the complaint is filed.

(5)

(A)

(i) A current or former judge who serves on the board and is the subject of a full investigation by the board or is a party to a hearing before the board must take a temporary leave of absence

from the board pending the completion of such action, with the vacancy to be filled for the duration of the leave of absence only.

(ii) A citizen member of the board must recuse himself or herself to avoid any impropriety, appearance of impropriety, or conflict of interest relating to the person's duties as a board member and matters that may come before the board.

(B) A current or former judge whose conduct results in the board taking disciplinary action against the judge will result in the judge's automatic dismissal from the board, creating a vacancy to be filled by the appropriate appointing authority.

(C) If a member recuses himself or herself or is dismissed pursuant to this subdivision (e)(5) all board matters may be heard by the remaining members of the board or, at the option of the members, a temporary replacement may be designated from the board by a majority vote of such members to sit on any investigative or hearing panel the recused or dismissed member was on.

(f) The appointing authorities, in making their appointments, shall strive to ensure the makeup of the board reflects the diversity of persons in Tennessee.

SECTION 2. Tennessee Code Annotated, Section 17-5-206, is amended by deleting the language "presiding judge" wherever it appears and substituting instead the word "chair".

SECTION 3. Tennessee Code Annotated, Section 17-5-207(e), is amended by deleting the subsection and substituting instead the following:

(e)

(1) The board shall adopt by rule a formal records retention policy and shall review such policy on an annual basis to determine if changes should be made.

(2)

(A) Notwithstanding any law or administrative rule to the contrary, the general assembly shall have limited access to board records as authorized under this subdivision (e)(2).

(B) The speaker of the senate and the speaker of the house of representatives shall each appoint two (2) members of the majority party and one (1) member of the minority party from each house who may request access to investigative reports and any other record compiled by the board pursuant to this chapter.

(C) The members appointed under subdivision (e)(2)(B) shall meet annually with the chair of the board and the investigative counsel to review all decisions relating to complaints for which formal charges have been filed based on the recommendation of an investigative panel.

(D) Any information obtained by or disclosed to a member of the general assembly pursuant to a request for records under this subsection (e) is confidential and is not a public record.

SECTION 4. Tennessee Code Annotated, Section 17-5-301(i)(7), is amended by deleting the subdivision and substituting instead the following:

The level of sanction, if any, previously rendered against other judges for the same conduct.

SECTION 5. Tennessee Code Annotated, Section 17-5-301, is further amended by adding the following language as a new subsection:

The legal analysis, findings of fact, and conclusions of law of a written opinion or order by the judge do not subject the judge to sanction.

SECTION 6. Tennessee Code Annotated, Section 17-5-304(a), is amended by adding the following language at the end of the subsection:

The disciplinary counsel shall commence the evaluation within thirty (30) days of the date of a request being submitted or a written complaint being filed.

SECTION 7. Tennessee Code Annotated, Section 17-5-304(b), is amended by deleting the language "pursuant to subdivision (c)(3), conduct a preliminary investigation" and substituting instead the language "pursuant to subdivision (c)(3), conduct a preliminary investigation. The preliminary investigation must be completed within sixty (60) days of the receipt of the complaint, unless the chair authorizes additional time for the completion of the investigation".

SECTION 8. Tennessee Code Annotated, Section 17-5-304(c)(3), is amended by deleting the subdivision and substituting instead the following:

(3) The investigative panel shall review the disciplinary counsel's recommendations and either dismiss the complaint or authorize a full investigation, subject to the requirements of § 17-5-201(e)(3)(A)(ii). The investigative panel has thirty (30) days to act on the disciplinary counsel's recommendation. The disciplinary counsel has no authority to dismiss a complaint without the review of and approval by the investigative panel; however, a complaint must be dismissed if the investigative panel fails to act within the time prescribed in this subdivision (c)(3).

SECTION 9. Tennessee Code Annotated, Section 17-5-304(d)(1), is amended by deleting the language:

Within thirty (30) days after the investigative panel authorizes a full investigation, disciplinary counsel shall give the following notice to the judge by certified mail:
and substituting instead the following:

Within thirty (30) days after the investigative panel authorizes a full investigation, the disciplinary counsel shall provide the judge with a copy of the complaint or complaints and shall give the following notice to the judge by certified mail:

SECTION 10. Tennessee Code Annotated, Section 17-5-304(d)(2), is amended by deleting the subdivision in its entirety.

SECTION 11. Tennessee Code Annotated, Section 17-5-304(e)(1), is amended by deleting the language:

Upon the conclusion of the disciplinary counsel's investigation, disciplinary counsel may recommend to the investigative panel any or any combination of the following:

and substituting instead the following:

A full investigation shall be completed within seventy-five (75) days of being authorized. Upon the conclusion of the disciplinary counsel's investigation, the disciplinary counsel may, in writing, recommend to the investigative panel any, or any combination, of the following:

SECTION 12. Tennessee Code Annotated, Section 17-5-307(c), is amended by deleting the subsection and substituting instead the following:

The judge shall have thirty (30) days from and after the receipt of written notice of the formal charge within which to file an answer with the board and serve a copy on the disciplinary counsel, along with discovery requests as provided by the Tennessee Rules of Civil Procedure.

SECTION 13. Tennessee Code Annotated, Section 17-5-308, is amended by adding the following as a new subsection (e):

(e) No costs related to a hearing or the disciplinary counsel's attorney fees resulting from such hearing may be taxed against the judge unless the sanction assessed requests removal from office.

SECTION 14. Tennessee Code Annotated, Section 17-5-308(a), is amended by deleting the language "to include the right to be represented by counsel" and substituting

instead the language "to include the right to be represented by counsel, the right to engage in discovery".

SECTION 15. Tennessee Code Annotated, Section 17-5-309(a), is amended by adding the following language at the end of the subsection:

The board shall issue its decision within sixty (60) days of the conclusion of the hearing.

SECTION 16. Tennessee Code Annotated, Section 17-5-309(b), is amended by adding the following language at the end of the subsection:

The board shall issue its findings of fact and conclusions of law within sixty (60) days of the conclusion of the hearing.

SECTION 17. For the purposes of vacating and reconstituting the board pursuant to Section 1, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect July 1, 2019, the public welfare requiring it.